Remarks

SUMMARY

Claims 11-17, 19-24, 26, 27, 29-31 and 34-37 are rejected and remain pending. Claims 11 and 21 are amended. Reconsideration is respectfully requested.

Claim Rejections under 35 U.S.C. § 101

The Office rejects claims 11-16 and 20-23 under § 101 for claiming subject matter which does not produce a useful, concrete, and tangible result. In particular, the Office asserts that these claims recite a computer that does nothing more than calculate a formula. Also, the Office particularly takes issue with the use of the word "if" in claim 11. Applicants submit that amended claim 11 is statutory subject matter.

The tangible results of the method of claim 11 include at least causing the platform to be configured using a set of one or more pre-selected configuration parameter values and providing information about the determined reference workload to facilitate the selection of the set of one or more configuration parameter values. The subject matter of these claims do more than merely calculate a mathematical formula. Applicants submit that these elements represent useful, concrete, and tangible results and that claim 11 is therefore proper subject matter for patent under § 101. Claims 12-16 depend from claim 11 and are, for at least the same reasons, also proper subject matter for patent.

The word "if" has been removed from claim 11, rendering this portion of the Office's rejection moot.

Applicants note that claim 20 depends from claim 17 which the Office has not deemed improper subject matter. Thus, Applicants respectfully submit that claim 20 is also proper subject matter for patent.

Claim 21 has been amended to include subject matter generally similar to claim 11. Also, claims 22 and 23 depend from claim 21 and applicants submit that claims 21-23 are therefore proper subject matter for patent.

Claim Rejections under 35 U.S.C. § 102

The Office rejects claims 17, 19-20, 24, 26, 31, 36, and 37 under 35 U.S.C. § 102(b) as being anticipated by *Reinemann*, U.S. Patent Publication No. 2003/0115118. To anticipate a claim under § 102(b), a prior art reference must teach all elements of the rejected claim. Claim 17 recites a method comprising:

> generating, by a computing system, a lookup index to one or more pre-established sets of configuration parameter values, based at least in part on an output of an index function configured to accept as input one or more measured performance values associated with one or more corresponding observed performance events associated with a platform's execution of a workload; and
>
> selecting, by the computing system, one of the one or more pre-established sets of configuration parameter values, based at least in part on the generated lookup index, for application to configure the platform.

Reinemann teaches monitoring resource utilization of a processor by collecting "performance status" metrics and archiving them in a log file.[1] In addition to monitoring, Reinemann discloses a policy manager capable of applying resource-sharing policies based on the collected performance status metrics. In the rejection of claim 17, the Office proffers alternative readings for what in Reinemann could constitute the "lookup index" of claim 17. First, the Office says that an inherent "memory pointer" to the log file reads on the lookup index and then later asserts that the log file itself reads on the lookup index. Applicants discuss each individually.

If an inherent memory pointer is read as the "lookup index", then there must be some sort of "index function" which generates this memory pointer. Even assuming, for the sake of argument, that some sort of function within Reinemann is used to generate memory pointers (which Applicants regard as a memory address) it can not be said that such a function is configured to accept as inputs "one or more measured performance values associated with one or more corresponding observed performance events associated with a platform's execution of a workload". Such a function would likely do more than add an offset value to some reference memory address to derive the new

[1] Reinemann, paragraph [0011].

memory pointer. Thus, Applicants submit that under this reading of Reinemann, not all elements of claim 17 are taught.

Under the Office's interpretation of Reinemann where the log file is the "lookup index" of claim 17, the performance status data is the "pre-established sets of configuration parameter values", and some inherent function which generates a data structure index for the log file is the "index function." But when showing how this inherent function accepts "measured performance values associated with one or more corresponding observed performance events" the Office merely states that the archive function of Reinemann is equivalent to the index of claim 17. But, whatever this inherent Reinemann index function is, Applicants submit that it can not be construed as accepting "measured performance values" as input. To the extent that the Office reads the *performance status* data as the "measured performance values," Applicants submit that the performance status data can not be both the "configuration parameter values" *and* the "measured performance values" of claim 17. Thus, Applicants submit that under this reading of Reinemann, not all elements of claim 17 are taught.

For at least these reasons, Applicants submit that Reinemann fails to teach – inherently or otherwise – all elements of claim 17 and that claim 17 is accordingly patentable over Reinemann under § 102(b).

Amended claims 24 and 31 recite limitations similar to those of claim 17, and are thus patentable over Reinemann for at least the same reasons. Accordingly, Reinemann does not anticipate claims 24 and 31.

Claims 18-20, 25-26, 36, and 37 depend from amended claims 17 and 24, incorporating their limitations. Accordingly – for at least the same reasons – Reinemann also fails to anticipate claims 18-20, 25-26, 36, and 37.

Claim Rejections under 35 U.S.C. § 103

Claims 11-16, 21-23, 27, 29-30, 34, and 35 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over *Reinemann*, and further in view of *Chiu*, U.S. Patent Publication No. 2002/0186658.

The Office cites the IP routing protocol OSPF discussed in Chiu paragraph [0023] as teaching the reference workload of claim 11. In Chiu, the utilization of a

network trunk is compared by an OSPF router to a threshold to determine whether to load-balance across trunks. If the trunk utilization exceeds the threshold, Chiu opts to load-balance.[2] In response to the previous Office Action, Applicants argued that such a comparison involves determining whether the performance metric is above or below the threshold, but does not involve determining whether the performance metric "resembles" the threshold. In response, the Office argues that one of ordinary skill in the art would understand that comparing the trunk utilization to a threshold is the same thing as determining whether the trunk utilization resembles the threshold. Applicants respectfully disagree. Applicants respectfully submit that one of ordinary skill would recognize that trunk utilization may resemble the threshold without exceeding it. Also, the trunk utilization may exceed the threshold by a wide margin and therefore not resemble it. Additionally, comparing the trunk utilization to a threshold to determine whether the trunk utilization exceeds the threshold does not require determining whether the two resemble one another. Therefore, when Chiu determines whether the trunk utilization exceeds the threshold, one of ordinary skill would recognize that it is not the same as determining whether the trunk utilization *resembles* the workload. Applicants recognize that the Office has room to interpret claim language broadly, but submit that the Office's interpretation of this claim language is unreasonably broad.

Therefore, for at least the above reasons, and for reasons previously submitted, Applicants submit that Reinemann and Chiu, individually or combined, fails to teach or suggest claim 11. Accordingly, Applicants submit that claim 11 is patentable over Reinemann and Chiu, alone or in combination.

Claim 21 and 27 recite limitations similar to those of claim 11, and accordingly are patentable over Reinemann and Chiu for at least the same reasons.

Claims 12-16, 22-23, 27, 29-30, 34, and 35 depend from claim 11, 21, and 27, respectively, incorporating their limitations. Accordingly, for at least the same reasons, claim 12-16, 22-23, 27, 29-30, 34, and 35 are patentable over Reinemann and Chiu, alone or in combination.

[2] See for example Chiu paragraph 40.

Response to Arguments

Applicants thank the Office for considering Applicants' previous remarks. Applicants respond to the Office's Response to Arguments elsewhere within this paper.

Conclusion

Applicants submit that all pending claims are in condition for allowance. Thus, a Notice of Allowance is earnestly solicited. Please contact the undersigned regarding any questions or concerns associated with the present matter. If any fees are due in connection with this paper, the Commissioner is authorized to charge Deposit Account No. 500393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Dated: July 21, 2008

/Richard B. Leggett/
Richard B. Leggett
Reg. No. 59,485

Pacwest Center, Suite 1900
1211 SW Fifth Avenue
Portland, Oregon 97204
Telephone: (503)222-9981